

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of Golden Hills Sanitation Company (U438SWR) for Authority to Increase Rates Charged for Sewer Service by \$148,076 or 120% in January 2012, \$148,076 or 54% in January 2013, and \$148,076 or 35% in January 2014.

Application 11-08-019  
(Filed August 26, 2011)

**DECISION AFFIRMING RATES ADOPTED IN DECISION 12-09-006  
AND CLOSING PROCEEDING****Summary**

This decision addresses the limited rehearing of Decision (D.) 12-09-006, as required by D.13-05-036, and affirms the rates adopted in D.12-09-006. D.13-05-036 granted limited rehearing of D.12-09-006 to determine the source and validity of debt listed in Golden Hills Sanitation Company's application for a rate increase, Application 11-08-019. This proceeding is closed.

**1. Background**

On August 26, 2011, Golden Hills Sanitation Company (GHSC) filed Application (A.) 11-08-019 requesting authority to increase its tariff rates by \$148,076 or 120 percent in January 2012, \$148,076 or 54 percent in January 2013, and \$148,076 or 35 percent in January 2014.

On November 22, 2011, GHSC filed a motion requesting expedited interim rate relief. In an e-mail ruling dated December 16, 2011,<sup>1</sup> the then-assigned

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<sup>1</sup> This e-mail ruling was confirmed in a ruling on December 19, 2011.

Administrative Law Judge (ALJ) authorized interim rate relief of \$62,099. In determining the interim rates, the ALJ relied on a confidential cash flow analysis prepared by the Division of Water and Audits (DWA), which considered only the most essential expenses that GHSC would need to pay over the test year 2012.

On February 21, 2012, GHSC sent a notice to its customers stating that it would initiate closure and cessation of sewer service effective February 29, 2012, because it lacked the revenues to continue its public utility operations.

On February 22, 2012, Commissioner Michel Peter Florio, the assigned Commissioner to A.11-08-019, issued an Assigned Commissioner's Ruling (ACR) imposing a temporary restraining order and requiring GHSC to continue to operate and provide sewer service until such time as a receiver could be appointed to operate the utility.

On March 14, 2012, the Commission issued Decision (D.) 12-03-025, which instituted Investigation (I.) 12-03-008, ratified Commissioner Florio's February 22, 2012 ACR, and ordered GHSC to show cause why the Commission should not petition the Kern County Superior Court for the appointment of a receiver to assume possession of GHSC. The Commission consolidated I.12-03-008 with A.11-08-019.

On March 12, 2012, Commissioner Florio issued an ACR,<sup>2</sup> which directed the Commission's Legal Division, in coordination with DWA, to immediately start proceedings in the Kern County Superior Court for appointment of a receiver to take possession of and operate GHSC.

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<sup>2</sup> This ACR was served via e-mail and was confirmed in another ACR issued on March 16, 2012.

On March 29, 2012, the Kern County Superior Court in Case S-1500-MS-375 appointed a receiver to take possession of and operate GHSC.

On September 18, 2012, the Commission issued D.12-09-006, which, among other things, affirmed as final the interim rates granted in December 2011. D.12-09-006 also disposed of various motions filed in the consolidated application and investigation, including denying the March 26, 2012 Motion to Nullify Debt filed by Adrian Maaskant, Angelina Adkins, Irene G. Torres, Natalie Bullock, Jorge and Zoila Recinos, Ryan and Stacy Estrella, Willow Springs Apartments (Marice Silitonga), and Golden Hills Motel (John Kapadia) (collectively, "Rehearing Applicants"). GHSC had provided a financial statement in support of its application for a rate increase, which stated that GHSC had long-term debt totaling \$800,504 owed to the Carlie Smith Trust.<sup>3</sup> The Motion to Nullify Debt had claimed that this long-term debt should be voided because GHSC did not obtain Commission authorization prior to incurring the debt as required pursuant to Public Utilities Code §§ 818, 823 and 825.

On October 1, 2012, the Rehearing Applicants jointly filed a timely application for rehearing of D.12-09-006. The Rehearing Applicants alleged that the Commission erred by denying their March 26, 2012 Motion to Nullify Debt.

On May 24, 2013, the Commission issued D.13-05-036, which granted a limited rehearing of D.12-09-006 in order to determine the source and validity of the debt listed in GHSC's application for a rate increase. D.12-09-006 authorized final rates for GHSC based on DWA's confidential cash flow analysis, which had

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<sup>3</sup> A.11-08-019, Exhibit D.

taken into account interest expenses relating to this debt.<sup>4</sup> In D.13-05-036, the Commission determined that there was a lack of information in the record regarding the validity of this debt, and therefore, granted a limited rehearing on this issue.

On July 14, 2014, the then-assigned ALJ held a prehearing conference (PHC) on the rehearing. On August 8, 2014, the Assigned Commissioner issued a Scoping Memo on Rehearing setting forth the procedural schedule, and addressing the scope of the rehearing and other procedural matters.

On November 2, 2015, the then-assigned ALJ held a second PHC on the rehearing. The Assigned Commissioner issued an Amended Scoping Memo on Rehearing on November 13, 2015.

On March 9, 2016, DWA, on behalf of all the Settling Parties,<sup>5</sup> filed a Motion for Approval and Adoption of a Proposed Settlement Agreement.

On April 15, 2016, Adrian Maaskant, on behalf of all the Settling Parties, requested that A.11-08-019, including consideration of the Proposed Settlement Agreement filed on March 9, 2016, be held in abeyance pending further settlement negotiations among the parties and proceedings before the Kern County Superior Court. On April 19, 2016, the assigned ALJ granted the Settling Parties' request to hold the proceeding in abeyance.

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<sup>4</sup> D.13-05-036 at 4. The fact that the authorized rates included interest expenses related to this debt does not necessarily mean that GHSC has been making payments on this debt.

<sup>5</sup> The Settling Parties include the Branch Banking and Trust, dba BB&T Wealth Management, individually and in its capacity as the Executor of the Estate of Carlie W. Smith; DWA; the Carlie Smith Estate and the Estate of Lillian Smith; Linda Maycock, individually and in her capacity as the surviving Executor of the Lillian Smith Estate; GHSC; Clifford E. Bressler, the Court-appointed Receiver for GHSC; Barbara Miller; and the Rehearing Applicants.

On August 24, 2016, the parties to A.11-08-019 jointly filed a Motion to Adopt Stipulation.<sup>6</sup> In their motion, the parties assert that there is no longer a dispute regarding the rate increase approved in D.12-09-006 and that the facts stipulated to by the parties provide sufficient justification for the Commission to close A.11-08-019.

## **2. Discussion**

The only matter pending in A.11-08-019 is the limited rehearing of D.12-09-006 granted in D.13-05-036.<sup>7</sup> The purpose of granting the limited rehearing was to determine whether the final rates authorized in D.12-09-006 should be adjusted based on questions regarding the validity of debt listed in GHSC's A.11-08-019, which had been factored into the final rates.

There is no longer a dispute among the parties regarding the rates approved in D.12-09-006. All of the parties to A.11-08-019 stipulate that the approved rates were not excessive and that any reduction to the current rates would likely result in an insufficient level of funding to operate GHSC.<sup>8</sup> The parties stipulate that the approved rates have not covered the cost of the GHSC Receivership, and the Receiver, Clifford E. Bressler, has personally incurred costs

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<sup>6</sup> The motion is joined by all of the parties currently listed as parties on the service list for A.11-08-019: Rehearing Applicants, Linda Maycock, Branch Banking and Trust Wealth Management, Barbara Miller, Clifford E. Bressler, Riley C. Walter, and DWA. The motion states that one party, Clinton Hilderbrand, does not join in the motion. Clint Hilderbrand is no longer a party to the proceeding pursuant to an ALJ ruling issued on September 20, 2016.

<sup>7</sup> The Commission closed I.12-03-008 in D.14-10-003 issued on October 3, 2014.

<sup>8</sup> Stipulated Facts 1 and 3. The parties' stipulation can be found as Attachment 1 to the Motion of Joint Parties to Adopt Stipulation filed on August 24, 2016.

totaling more than \$100,000 administering the GHSC Receivership for which he has not been paid.<sup>9</sup>

As there are no further issues in contention in this proceeding, the parties urge the Commission to close A.11-08-019. The parties argue that closure of the proceeding is in the public interest and will benefit GHSC's customers by providing certainty and clearing a path for a new owner to purchase GHSC.

We accept the parties' stipulation as part of the record of this proceeding and take into consideration the stipulated facts in resolving the limited rehearing of D.12-09-006. We find that no further proceedings are necessary to resolve the limited hearing.

D.12-09-006 granted a rate increase of \$62,099. Based on the stipulated facts and the utility's circumstances, we agree with the parties that the rates approved in D.12-09-006 were not excessive and should not be adjusted. The utility's application had originally requested an increase of \$148,076 for 2012. The Commission determined that a rate increase of \$62,099 was a reasonable level of rates that balanced the interests of the ratepayers by reducing rate shock and providing the utility with sufficient funds to continue to pay its most basic bills.<sup>10</sup>

GHSC effectively abandoned the GHSC sewer system and the system has been under receivership since March 29, 2012, when the Kern County Superior Court appointed a receiver to take possession of and operate GHSC.<sup>11</sup> According to the parties' stipulation, the rates approved in D.12-09-006 have been only

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<sup>9</sup> Stipulated Facts 2 and 4.

<sup>10</sup> D.12-09-006 at 8.

<sup>11</sup> See D.12-09-006 at Findings of Fact 15 and 34.

sufficient to fund the basic operations of GHSC but have not been sufficient to pay the Receiver his fees for administering the Receivership. Given these circumstances, any downward adjustment to the rates could jeopardize the ability of the Receiver to ensure that GHSC's customers receive safe and reliable sewer service, as well as the ability of the Receiver to find a new owner for the sewer system. The Receiver cannot operate the utility indefinitely and it is in the best interests of the customers of GHSC for the sewer system to be sold to a new owner that is willing and able to provide utility service.

Based on the foregoing, we find that it is in the public interest for the rates approved in D.12-09-006 to be affirmed. Therefore, we grant the parties' request to affirm the rates approved in D.12-09-006. As resolution of this issue leaves no other issues pending in A.11-08-019, we also grant the parties' request to close A.11-08-019.

### **3. Categorization and Need for Hearing**

In Resolution ALJ 176-3280 issued on September 8, 2011, the Commission preliminarily determined that the category of this proceeding is ratesetting and that hearings would be needed.

### **4. Waiver of Comment Period**

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code and Rule 14.6(c)(2) of the Commission's Rules of Practice and Procedure, the otherwise applicable 30-day period for public review and comment is waived.

### **5. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Sophia J. Park is the assigned ALJ.

### **Findings of Fact**

1. On August 26, 2011, GHSC filed A.11-08-019 seeking authority to increase its rates.
2. On November 22, 2011, GHSC filed a motion requesting expedited interim rate relief.
3. In an e-mail ruling dated December 16, 2011, which was confirmed in a ruling dated December 19, 2011, the then-assigned Administrative Law Judge authorized interim rate relief of \$62,099.
4. On September 18, 2012, the Commission issued D.12-09-006, which, among other things, affirmed as final the interim rates granted in December 2011.
5. On October 1, 2012, the Rehearing Applicants jointly filed a timely application for rehearing of D.12-09-006.
6. On May 24, 2013, the Commission issued D.13-05-036, which granted a limited rehearing of D.12-09-006 in order to determine whether the final rates authorized in D.12-09-006 should be adjusted based on questions regarding the validity of debt listed in GHSC's A.11-08-019, which had been factored into the final rates.
7. Pursuant to the stipulation filed on August 24, 2016, there is no longer a dispute among the parties regarding the rates approved in D.12-09-006.
8. The rate increase granted by D.12-09-006 was not excessive.
9. The rate increase granted by D.12-09-006 has been sufficient to fund the basic operations of GHSC but has not covered the receivership costs.
10. Any reduction to the current rates would likely result in an insufficient level of funding to operate GHSC.



11. Since being appointed Receiver on March 29, 2012, Clifford E. Bressler has personally incurred costs totaling more than \$100,000 in administering the GHSC Receivership for which he has not been paid.

12. Any downward adjustment to the approved rates could jeopardize the ability of the Receiver to ensure that GHSC's customers receive safe and reliable sewer service and his ability to find a new owner for the sewer system.

13. It is in the public interest for the rates approved in D.12-09-006 to be affirmed.

**Conclusions of Law**

1. The rates adopted in D.12-09-006 should be affirmed in order to ensure that the customers of GHSC continue to receive safe and reliable sewer service.
2. Evidentiary hearings were not necessary.
3. A.11-08-019 should be closed.

**O R D E R**

**IT IS ORDERED** that:

1. The rates adopted in Decision 12-09-006 are affirmed.
2. The stipulation attached as Attachment 1 to the Motion of Joint Parties to Adopt Stipulation filed on August 24, 2016 is accepted as part of the record of Application 11-08-019.
3. All outstanding motions in Application 11-08-019 are denied.
4. No evidentiary hearings are necessary.
5. Application 11-08-019 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.